

06.12.2022
Court No. 3
AD/ 14

**CALCUTTA HIGH COURT CIRCUIT BENCH
AT JALPAIGURI**

C. R. R. 244 OF 2022

**In Re: An application under Section 482 of the Code
of Criminal Procedure, 1973;
And**

In the matter of: Dulal Chandra Das

Petitioner.

Mr. Arijit Ghosh

.....For the Petitioner.

Mr. Aditi Shankar Chakraborty, Ld. APP.,
Mr. Kallol Acharjee

.....For the State.

The instant application is filed under section 482 of the Code of Criminal Procedure, 1973 against the impugned Order dated 29/07/2022 passed by the Additional Sessions Judge, Alipurduar.

The Petitioner, being maternal grandfather of a minor girl, filed an application under section 97 of the Code of Criminal Procedure, 1973 against the Opposite Party No.2, being his son-in-law for recovering the minor girl. It was contended that the daughter of the present Petitioner met with unnatural death in her matrimonial home for which the present Petitioner initiated criminal prosecution

being Kumargram Police Station Case No.173 of 2021 dated 22/08/2021 under sections 498A/304/34 of the Indian Penal Code. The minor daughter was in the custody of the Petitioner, being her maternal grandfather. The Opposite Party No.2, being the father of the minor girl filed an application before the Sub-Divisional Magistrate, Alipurduar, praying for issue of warrant under section 97 of the Code of Criminal Procedure, 1973. The Sub-Divisional Magistrate issued search warrant whereby the custody of the minor daughter was handed over to the Opposite Party No.2 being the father of the minor daughter.

Being aggrieved and dissatisfied, the present Petitioner preferred an application of criminal revision under section 397/399 of the Code of Criminal Procedure, 1973 before the Additional Sessions Judge, Alipurduar. The said application was dismissed by the additional Sessions Judge on the ground that an interlocutory order cannot be subject to a revision application. Since an order passed under section 97 of the Code of Criminal Procedure is interlocutory in nature, according to the Revisional Court, the revisional application was rejected in terms of the impugned order.

Hence, the instant application is filed.

Section 97 of the Code of Criminal provides:

“97. Search for persons

wrongfully confined. If any District

Magistrate, Sub-divisional

Magistrate or Magistrate of the first

class has reason to believe that any

person is confined under such

circumstances that the confinement

amounts to an offence, he may

issue a search-warrant, and the

person to whom such warrant is

directed may search for the person

so confined; and such search shall

be made in accordance therewith,

and the person, if found, shall be

immediately taken before a

Magistrate, who shall make such

order as in the circumstances of the

case seems proper.”

The present Petitioner is the maternal grandfather of the minor girl whereas the Opposite Party No.2 is the father as well as the natural guardian of the minor. In that case, the Opposite

Party No.2 is the legal guardian and is entitled to the custody of the minor in exercise of section 97 of the Code of Criminal Procedure, 1973. But this would not prevent the present Petitioner to file appropriate application in a court of competent jurisdiction praying for custody and guardianship of the minor girl.

The order passed by the Sub-Divisional Magistrate issuing warrant under section 97 of the Code of Criminal Procedure, demands no interference. On the other hand, the Additional Sessions Judge, while passing the impugned judgment applied the correct principles of law ruling out any need of any interference.

In nutshell, the instant application is not allowed and stands dismissed on merit.

The instant case is disposed of accordingly.

(Sugato Majumdar, J.)